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 PALMTREE ACQUISITION CORPORATION, a Delaware
 corporation f/k/a Catellus Development Corporation

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PALMTREE ACQUISITION CORPORATION, a
 Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual; PERRY J.
 NEELY, an individual; GARY NEELY, an
 individual; MICHAEL R. NEELY, PERRY J.
 NEELY and GARY NEELY dba MIKE'S ONE
 HOUR CLEANERS; CHARLES FREDERICK
 HARTZ dba PAUL'S SPARKLE CLEANERS;
 CHARLES F. HARTZ, an individual;
 MULTIMATIC CORPORATION, a New Jersey
 corporation; WESTERN STATES DESIGN, a
 California corporation; MCCORDUCK
 PROPERTIES LIVERMORE, LLC, a Delaware
 limited liability company individually and as the
 successor to JOHN MCCORDUCK, KATHLEEN
 MCCORDUCK, PAMELA MCCORDUCK,
 SANDRA MCCORDUCK MARONA, and IMA
 FINANCIAL CORPORATION, a California
 corporation; JOHN MCCORDUCK, individually;
 KATHLEEN MCCORDUCK, individually;
 PAMELA MCCORDUCK, individually; SANDRA
 MCCORDUCK MARONA, individually; IMA
 FINANCIAL CORPORATION, a California
 corporation; STARK INVESTMENT COMPANY,
 a California general partnership; GRUBB & ELLIS
 REALTY INCOME TRUST, LIQUIDATING
 TRUST, a California trust; and DOES 1-20,
 inclusive,

Defendants.

CASE NO. CV 08 3168 ~~MHP~~ EMC

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

HON. EDWARD M. CHEN

DATE: JUNE 27, 2013

TIME: 9:00 A.M.

COURTROOM: 5, 17TH FLOOR

1 The parties who have appeared in the above-captioned environmental action have met and
 2 conferred and jointly submit the following Joint Case Management Conference Statement.

3
 4 1. **Date case was filed:** This case was filed on July 1, 2008. The Second
 5 Amended Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was
 6 filed on August 24, 2011.

7 2. **List or description of all parties:** The parties to this case are as follows:

8
 9 a. Plaintiff Palmtree Acquisition Corporation, successor to a former owner
 10 of the Livermore Arcade Shopping Center ("LASC"), one of two shopping centers
 11 comprising the subject property;

12 b. Defendant and Third Party Plaintiff Stark Investment Company, former
 13 owner of the LASC and Miller's Outpost Shopping Center ("MOSC"), the second
 14 shopping center comprising the subject property;

15 c. Defendant and Third Party Plaintiff The Kirrberg Corporation fka
 16 Multimatic Corporation, manufacturer of the dry cleaning machine at the LASC;

17 d. Defendants Michael R. Neely, Perry J. Neely and Gary Neely,
 18 individually and dba Mike's One Hour Cleaners, the dry cleaning operator at the
 19 LASC;

20 e. Defendant Charles Hartz, individually and dba Paul's Sparkle Cleaners,
 21 the dry cleaning operator at the MOSC;

22 f. Defendant Western States Design, distributor of the dry cleaning
 23 machine at the LASC;

24 g. Defendant McCorduck Properties Livermore, LLC, current owner of the
 25 MOSC;

26 h. Defendants John McCorduck, Kathleen McCorduck, Pamela
 27 McCorduck and Sandra McCorduck Marona, former owners of the MOSC;

28 i. Defendant IMA Financial Corporation, former owner of the MOSC; and

j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson Marital Trust, dated February 28, 1979, as amended and restated August 31, 1994 and The Anderson Tax Deferral Trust, dated February 28, 1979, as amended and restated August 31, 1994, current owners of the LASC.

3. **Summary of all claims, counter-claims, cross-claims, third party claims:**

a. Plaintiff claims (1) contribution under CERCLA Sections 107(a) and (e)(2), 42 U.S.C. §§ 9607(a) and (e)(2), against all Defendants; (2) Declaratory Relief under CERCLA against all Defendants; (3) Continuing Public Nuisance against all Defendants; (4) Negligence against Defendants Neelys, Multimatic and Western States Design; (5) Equitable Indemnity against all Defendants; and (6) Declaratory Relief under state law against all Defendants.

b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a) and (e)(2), 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3) Equitable Indemnity; and (4) Declaratory Relief under state law against all Third Party Defendants.

4. **Brief description of the event underlying the action:** This action is a “re-opener” of a prior action that was conditionally settled. The prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California and entitled *Grubb & Ellis Realty Income Trust, Liquidating Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No. C93-0383 SBA (“Prior Action”). The Prior Action concerned the alleged release of dry cleaning solvent perchloroethylene (“PCE”) from the dry cleaning establishments at the LASC and MOSC in Livermore, California. The California Regional Water Quality Control Board (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning operators and property owners to remediate the soil and groundwater impacted by PCE contamination from the centers. Following settlement of the Prior Action, certain parties requested, and the RWQCB

1 granted, the establishment of a Containment Zone with a Contingency Plan and the RWQCB issued a
 2 new order in 1996 to that effect. However, on March 17, 2008 and March 21, 2008, the RWQCB
 3 issued Directives requiring further investigation and monitoring of the PCE contamination, which also
 4 potentially impacted the deeper aquifer, thereby allegedly triggering the “re-opener” provision in the
 5 settlement agreement. Plaintiff Palmtree Acquisition Corporation filed this action on July 1, 2008,
 6 seeking contribution under CERCLA and damages pursuant to the “re-opener” provision, among other
 7 claims.
 8

9 **5. Description of relief sought and damages claimed with an explanation as to**
 10 **how damages are computed:** The parties seek both declaratory and monetary relief through the
 11 Second Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims
 12 and counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,
 13 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution of
 14 the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of future
 15 investigative costs and remedial measures (to be determined) under CERCLA. The parties also seek
 16 monetary damages for nuisance and negligence.
 17

18 **6. Status of discovery (including any limits or cutoff dates):** Since September
 19 2008, discovery has been stayed, including initial disclosures, so that the parties could engage in
 20 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along with
 21 other potentially responsible parties, and are continuing to do so, while simultaneously working
 22 cooperatively as a group to respond to the RWQCB’s directives and requirements. Indeed, Plaintiff
 23 and Defendants, with the exception of Grubb & Ellis Realty Income Trust, Liquidating Trust, have
 24 thus far spent over \$1,000,000 since March 2008 in their response efforts: including jointly hiring a
 25 project manager and technical consultant; directing investigative measures and submitting a final
 26 technical investigative report; submitting a work plan, directing work thereunder and submitting a
 27
 28

1 remedial investigation report with technical findings and proposed remedial alternatives; submitting a
 2 draft remedial action plan; and coordinating among the various regulatory agencies. The responding
 3 parties and the contractor are currently working with the RWQCB on the approval of a remedial action
 4 plan for the site. The parties have nearly finalized a settlement among them, which is contingent upon
 5 a settlement in another state court case involving one of the defendants in this action. A settlement in
 6 principle in that state court case has been reached, and a settlement agreement is currently being
 7 prepared. The parties anticipate that both settlements will be final by September 30, 2013. The
 8 parties would like to continue working cooperatively towards resolution of this matter and thus
 9 propose that the discovery stay be continued.

11 7. **Procedural history of the case including previous motions decided and/or**
 12 **submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate**
 13 **proceedings pending or concluded, and any previous referral to a magistrate judge:** As
 14 described above, the parties have been mediating among themselves before Timothy Gallagher, Esq.
 15 This case was initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April
 16 2, 2010 and then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case
 17 consist of:
 18

19 a. Application for good faith settlement determination by Plaintiff
 20 Palmtree Acquisition Corporation and Defendant Northrop Grumman Systems
 21 Corporation, granted October 4, 2010.

22 b. Motion to dismiss the First Amended Third Party Complaint by Third
 23 Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr.
 24 Revocable Inter Vivos Trust, granted without prejudice on October 4, 2010.

25 c. Motion to dismiss the Second Amended Third Party by Third Party
 26 Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable
 27 Inter Vivos Trust, granted with prejudice on February 11, 2011.
 28

d. Motion to dismiss one cause of action from the Third Amended Third Party Complaint, or in the alternative, for a more definite statement by Third Party Defendant Dorothy Anderson, granted without prejudice on August 4, 2011.

e. Motion to dismiss the Fourth Amended Third Party Complaint by Third Party Defendant Dorothy Anderson, denied on October 24, 2011.

f. Stipulation and order of good faith settlement determination as to the Neely parties, signed January 1, 2013.

8. **Other deadlines in place (before reassignment), including those for dispositive motions, pretrial conferences, and trials:** None.

9. **Any requested modification of these dates and reason for the request:**
None.

10. **Whether the parties will consent to a magistrate judge for trial:** The parties to this Joint Case Management Conference Statement do not consent to a magistrate judge for trial.

11. **Whether Judge Chen has previously conducted a settlement conference in this case, and if so, whether the parties stipulate to him handling this case for trial pursuant to ADR Local Rule 7-2 or request his recusal:** Judge Chen has not previously conducted a settlement conference in this case.

12. **If there exists an immediate need for a case management conference to be scheduled in the action:** The parties believe that substantial progress is being made to amicably resolve this matter through mediation. As noted in the prior joint case management conference statement filed on December 7, 2012 (Doc. 159), the parties were optimistic at that time that they could finalize the settlement by the first quarter of 2013. Final resolution of this case, however, has been delayed because the settlement of this matter is contingent upon the settlement of a state court matter involving one of the defendants here. A settlement in principle of the state court matter has

1 been reached, and a settlement agreement in that matter is now being prepared. Thus, the parties
 2 anticipate that the settlement agreement in this matter will be executed soon and that a motion for
 3 good faith settlement determination under state law and contribution protection under CERCLA can
 4 be filed with this Court by September 2013.

5
 6 Therefore there is no immediate need for a case management conference to be scheduled. The
 7 parties propose the scheduling of a further case management conference in December 2013 or January
 8 2014, so that they may continue with mediation efforts and finalize a settlement.

9
 10 Dated: June 17, 2013

Cox, Castle & Nicholson, LLP

11 By: /s/ Peter Morrisette
 12 Peter Morrisette
 13 Attorneys for Plaintiff Palmtree
 14 Acquisition Corporation, a Delaware
 corporation f/k/a Catellus Development
 Corporation

15 Dated: June 17, 2013

GONSALVES & KOZACHENKO

16 By: /s/ Paul Kozachenko
 17 Paul Kozachenko
 18 Attorneys for Defendant & Third Party
 Plaintiff Stark Investment Company, a
 California limited partnership

19 Dated: June 17, 2013

The Costa Law Firm

20 By: /s/ Daniel P. Costa
 21 Daniel P. Costa
 22 Attorneys for Defendant & Third Party
 23 Plaintiff Stark Investment Company, a
 California limited partnership

24 Dated: June 17, 2013

Claytor Law Group

25 By: /s/ James D. Claytor
 26 James D. Claytor
 27 Attorneys for Defendant Western State
 Design, a California corporation

1 Dated: June 17, 2013

BASSI, EDLIN, HUIE & BLUM LLP

2
3 By: /s/ Farheena Habib
Farheena Habib
4 Attorneys for Defendants Michael R.
5 Neely, Perry J. Neely, and Gary Neely,
dba Mike's One Hour Cleaners

6 Dated: June 17, 2013

Dongell Lawrence Finney, LLP

7 By: /s/ Thomas A. Vandenberg
8 Thomas A. Vandenberg
9 Attorneys for Defendant & Third Party
10 Plaintiff The Kirrberg Corporation f/k/a
Multimatic Corporation

11 Dated: June 17, 2013

Rogers Joseph O'Donnell

12
13 By: /s/ D. Kevin Shipp
D. Kevin Shipp
14 Attorneys for Defendant Charles
15 Frederick Hartz, dba Paul's Sparkle
Cleaners

16 Dated: June 17, 2013

Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

17
18 By: /s/ Bruce C. Paltenghi
Bruce C. Paltenghi
19 Attorneys for Defendant McCorduck
20 Properties Livermore, LLC, a Delaware
limited liability company; John
21 McCorduck; Kathleen McCorduck;
22 Pamela McCorduck; and Sandra
McCorduck Marona

23 Dated: June 17, 2013

Stanzler Law Group

24 By: /s/ Jordan S. Stanzler
25 Jordan S. Stanzler
26 Attorneys for Defendant IMA Financial
Corporation, a California corporation
27
28

1 Dated: June 17, 2013

Paladin Law Group LLP

2
3 By: /s/ John Till
John Till
4 Attorneys for Third Party Defendant
Dorothy Anderson, Trustee of the
5 Anderson Marital Trust and The Anderson
6 Tax Deferral Trust
7

8 Filer's Attestation: Pursuant to Local Rule 5-1(i), I attest under penalty of perjury that concurrence in
9 the filing of this document has been obtained from its signatories.
10

11 DATED: June 17, 2013

Respectfully submitted,

12
13
14 /s/ Peter Morrisette

15 Peter Morrisette
16

17
18 It is so ordered that the CMC is reset for 12/19/13 at 9:00 a.m. An updated joint CMC statement
shall be filed by 12/12/13.

19 EDWARD M. CHEN
20 U.S. DISTRICT JUDGE

